United States Court of Appeals

for the Second Circuit

APPENDIX

77-1348

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

P/S

UNITED STATES OF AMERICA,

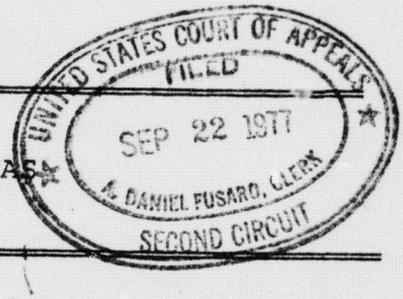
Appellee

v.

ANDREW TSANAS,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



APPENDIX TO BRIEF FOR
APPELLANT, ANDREW TSANAS

JOSEPH J. LOMBARDO
16 Court Street
Brooklyn, New York 11241
Attorney for Appellant,
Andrew Tsanas

JOSEPH J. LOMBARDO, ESQ.
DONALD NAWI, ESQ.

Of Counsel

PAGINATION AS IN ORIGINAL COPY

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FELONY (or) x 0712 | TSANAS, ANDREW | 3 2 | 77 119

26:7201 Did file false tax returns, etc. 5

SUPERSEDING COUNTS

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT XX or	ARRAIGNMENT	TRIAL	SENTENCE
	Information 3-2-77	3/3/77 "	6/6/77 X 6/6/77 " X	6/15/77 X

Disposition of Charges: Convicted; On All Charges; On Lesser Offense(s); Acquitted; Dismissed; WOP; WP; On Government's Motion

MAGISTRATE

	DATE	INITIAL NO
Search Warrant: Issued / Return		
Summons: Issued / Served		
Arrest Warrant Issued		
COMPLAINT ▶		
OFFENSE (in Complaint)		

	INITIAL NO	OUTCOME:
INITIAL APPEARANCE DATE ▶		DISMISSED
PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶		HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
WAIVED / NOT WAIVED	Tape Number	HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
INTERVENING INDICTMENT		

U.S. Attorney or Asst.: S.Kimelman

ATTORNEYS Defense: CJA X Ret. Waived Self None / Other PD. CD

Joseph Lombardo
16 Court St., Bklyn, NY.11241
855-1770

Show last names of defendants. Enter in counts on same indictment information

PAULINE TSANAS 2

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
3-2-77		Before CATOGGIO, J - Indictment filed	
3-3-77		Notice of appearance filed.	
3-3-77		Before MISHLER, CH J - case called - deft & atty present - deft arraigned and enters a plea of not guilty - bail set at $50,000 PRB and cash deposit of $5,000-3-11-77 to post the cash deposit - May 2, 1977 for trial - 4-22-77 for pre trial conference at 11:30 am.	
3/8/77		By MISHLER, CH. J.- Certificate of engagement dtd 3/8/77 filed setting date for trial - 5/2/77 at 10:00 a.m.	
3.10.77		By U.S. Magistriate, Catoggio, V.- Order for Acceptance of Cash Bail filed.	
3/10/77		By NEAHER, J. - Copy of order for acceptance of cash bail filed.	
4.1.77		Copy of Letter filed addressed to Joseph Lombardo from Steven Kimelman clarifying Govt's remarks at last Thursday's arraignment regarding the discovery process etc.	
4-8-77		Letter filed dated 4-7-77 to atty and Certificate of Engagement setting case for trial June 6, 1977	

DATE	IV PROCEEDINGS (continued) PAGE TWO (DOCUMENT NO.)	V EXCLUDABLE DELAY
4-8-77	BeforeMishler, Ch J - case called motion by the deft for a new trial date - motion granted - trial date reset for 6-6-77. All motions by May 6, 1977	
4/22/77	Before Mishler, Ch J-conf adjd w/o date.JLJ	
5.6.77	Before Mishler, J.- Case Called Deft. & Counsel present. 6.6.77 for Trial, 5.20.77 for Motions as to mental competency & severance for Motions for bill or particulars and discovery argued. Motions granted and denied in part as indicated on the record.	gp
5/9/77	Notice of appearance filed.JLJ	
5/9/77	Copy of combined motion and notice seeking Bill of Particulars etc.JLJ	
5/20/77	Before Mishler, Ch J-case called-[illegible]-motion by deft for a new trial date-denied-6/6/77 for trial.jlj	
5-26-77	Letter filed dated May 25, 1977 received from Chambers to counsel directing appearance for pre trial conference, etc. on June 3, 1977 at 3:30 PM.	
6/3/77	Before Mishler, Ch J-pre trial conf adjd to 6/6/77.jlj	
6/6/77	Before Mishler, Ch J-case called-deft & counsel present trial ordered & begun-jurors selected-trial contd to 6/7/77.jlj	
6/7/77	Before Mishler, Ch J-case called-deft & counsel present trial resumed-trial contd to 6/8/77.jlj	
6/8/77	Before Mishler, Ch J-case called-deft & counsel present trial resumed-case adjd to 6/9/77 for trial.jlj	
6-9-77	Before Mishler, Ch J - case called.- deft & atty Joseph Lombardo present - trial resumed - Trial contd to 6-10-77. rs.	
6/10/77	Before Mishler, Ch J-case called-deft & counsel present trial resumed-trial contd to 6/13/77.jlj	
6/13/77	Before Mishler, Ch J-case called-deft & counsel present trial resumed-govt rests-motion by deft for a judgment of acquittal is denied-deft rests-trial contd to 6/14/77.jlj	
6.14.77	Before Mishler, J.- Case Called. Trial resumed. Deft. sums up. Govt. rebuttal. Court charges Jury. Alternates discharged. At 1:00 P.M. the jury retired for deliberations. Order of sustenance signed for Lunch. At 5:45 P.M. the Jury returned and asked to be excused for the day. Jury to return on 6.15.77 at 9:30 A.M. for further deliberations.	gp
6.15.77	By Mishler, J.- Order of Sustenance filed.	gp
6-15-77	Before MISHLER, CH J -case called - deft & atty Joseph Lombardo present - trial resumed - at 9:40 am Jury retired for further deliberations - at 10:37 AM Jury returned and rendered a verdict of not guilty on count 1; not guilty on count 2 under 26:7201 and guilty under 26:7206(1) of count 2 - jury also found deft guilty on counts 3,4 and 5 under 26:7201 Jury polled and discharged - trial concluded - Memo of verdict signed by the Foreman ordered filed - all motions reserved until time of sentence - motion	

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

77 Yr. | 119 Docket No. | 1 Def.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
	continuation..... by the Govt. to increase bail argued - bail reset at $100,000.00 PRB with a cash deposit of $10,000.00 - bond to be signed by wife tomorrow & son today - security to be posted by June 20th, 1977 at 4:00 P.M. Sentence adjd. without date.				
6.15.77	Memorandum of Verdict filed and forwarded to Chambers.				gp
6.16.77	By U.S. Magistrate Chrein, A.S.- Order for acceptance of Cash Bail filed.				gp
6.17.77	Stenographer's Transcript dated June 15th, 1977 filed.				gp
6.17.77	Stenographer's Transcript dated June 7th, 1977 filed.				gp
6.17.77	Stenographer's Transcript dated June 8th, 1977 filed.				gp
6.17.77	Stenographer's Transcript dated June 9th, 1977 filed.				gp
6.17.77	Stenographer's Transcript dated June 10th, 1977 filed.				gp
6.17.77	Stenographer's Transcript dated June 13th, 1977 filed.				gp
6-21-77	Transcript filed dated June 6, 1977.				
6/29/77	Sten's transcript dtd 6/14/77 filed.jlj				
7/29/77	Letter of Mishler, Ch J to Joseph Lombardo dtd 7/28/77 re that application for postponment of sentencing is denied.jlj				
7/29/77	Letter of Joseph Lombardo to Mishler, Ch J dtd 7/27/77 filed re requesting that sentencing date be postponed.jlj				
8-8-77	Before Mishler, Ch J - case called - deft & counsel Joseph Lombardo present - deft is sentenced on ct.2 to imprisonment for 3 years and fined $5,000; on count 3 3 years imprisonment and fined $10,000; prison terms on counts 2 and 3 to run concurrently and the fines imposed are to be cumulative in the total of $15,000. On counts 4 and 5 imposition of sentence is suspended and deft is placed on probation for 3 yrs. Probation period is to commence at the end of the terms imposed in counts 2 and 3 - bail contd - execution of sentence is stayed to 9-2-77 at 4 PM. Deft is advised of right to appeal; counsel will notify the Court.				
8-8-77	Judgment and commitment and order of probation filed - certified copies to probation & Marshal.				
8-9-77	Notice of appeal filed - docket entries and duplicate of Notice mailed to the court of appeals.				

AO 256A

Interval (per Section II) | Start Date / End Date | Ltr. Code | Total Days

RP:SK:sd
#763026

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
★ MAR 2 1977 ★
TIME A.M.
P.M.

A 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

ANDREW TSANAS and
PAULINE TSANAS,

Defendants.

- - - - - - - - - - - - - - - - - - X

INDICTMENT

Cr. No.
(T. 26, U.S.C., §7201)

77CR 119

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 14th day of April, 1972, in the Eastern District of New York, ANDREW TSANAS and PAULINE TSANAS, residents of Brooklyn, New York, who during the calendar year 1971 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York a false and fraudulent joint income tax return on their behalf which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $15,986.00 and that the amount of tax due and owing thereon was the sum of $3,257.00, whereas as they then and there well knew, their joint taxable income for the said calendar year was the sum of approximately $72,386.00, upon which said taxable income there was owing to the United States of America an income tax of approximately $29,032.00.

In violation of Title 26, United States Code, Section 7201.

COUNT TWO

On or about the 7th day of March, 1973, in the Eastern District of New York, ANDREW TSANAS and PAULINE TSANAS, residents of Brooklyn, New York, who during the calendar yerr 1972 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1972, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York a false and fraudulent joint income tax return on their behalf which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $17,092.00 and that the amount of tax due and owing thereon was the sum of $3,566.00, whereas as they then and there well knew, their joint taxable income for the said calendar year was the sum of approximately $178,607.00, upon which said taxable income there was owing to the United States of America an income tax of approximately $96,233.00.

In violation of Title 26, United States Code, Section 7201.

COUNT THREE

On or about the 12th day of April, 1974, in the Eastern District of New York, ANDREW TSANAS and PAULINE TSANAS, residents of Brooklyn, New York, who during the calendar year 1973 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1973, by preparing and causing to be prepared, by signing

and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York, a false and fraudulent joint income tax return on their behalf which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $16,431.00 and that the amount of tax due and owing thereon was the sum of $3,381.00, whereas as they then and there well knew, their joint taxable income for the said calendar year was the sum of approximately $256,648.00, upon which said taxable income there was owing to the United States of America an income tax of approximately $150,634.00.

In violation of Title 26, United States Code, Section 7201.

COUNT FOUR

On or about the 9th day of April, 1975, in the Eastern District of New York, ANDREW TSANAS and PAULINE TSANAS, residents of Brooklyn, New York, who during the calendar year 1974 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1974, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Eastern District of New York, a false and fraudulent joint income tax return on their behalf which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year was the sum of $18,563.00 and that the amount of tax due and owing thereon was the sum of $3,978.00, whereas as they then and there well knew, their joint taxable income for the said calendar year was the sum of approximately $377,951.00,

upon which said taxable income there was owing to the United States of America an income tax of approximately $235,546.00.

In violation of Title 26, United States Code, Section 7201.

COUNT FIVE

On or about the 24th day of March, 1976, in the Eastern District of New York, ANDREW TSANAS and PAULINE TSANAS, residents of New York, New York, who during the calendar year 1975 were married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by them to the United States of America for the calendar year 1975, by filing and causing to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Holtsville, Long Island, New York, a false and fraudulent joint income tax return on their behalf, wherein it was stated that their taxable income for said calendar year was the sum of $19,971.00 and that the amount of tax due and owing thereon was the sum of $4,252.00 whereas, as they then and there well knew, their joint taxable income for the said calendar year was the sum of approximately $600,867.00 upon which said taxable income there was owing to the United States of America an income tax of approximately $391,537.00.

In violation of Title 26, United States Code, Section 7201.

A TRUE BILL.

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

T4AMR2 ss;kg

THE COURT: No one will be allowed to leave the courtroom during the charge. If you would like to leave, please leave now.

(pause)

Seat the jury, please.

(jury enters the courtroom)

THE COURT: The memorandum of verdict will be marked as Court Exhibit 4.

THE CLERK: So marked.

(so marked)

THE COURT: Madame Foreman and ladies and gentlemen of the jury.

The document marked memorandum of verdict that you found on your seat is not an official document. It has a limited use as I will charge you later. It intends to advise you as to the charge in the indictment and then for reasons that I'll explain later it has a lesser included offense.

In United States of America versus Andrew Tsanas the Government charges the defendant with income tax evasion which means that the counts are based on a violation of Section 7201 of Title 26. These numbers are for the record. Don't try to remember them, which makes it a crime to attempt to evade or defeat income taxes due and that charge includes a lesser offense

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Charge

and that offense is known as Section 7206 which makes it an offense to file an income tax return containing a statement which the taxpayer does not believe to be true and correct as to every material matter.

The defendant has pleaded "not guilty" to the charges in the indictment and the five counts refer to separate charges for each tax year beginning in 1971.

A good beginning point in charging you on the law is for the jury to understand the role that every participant in a jury trial plays. We first have the lawyers who are adversaries. In effect, it means the lawyers take competing positions, adversary positions on issues of fact in the trial. The theory is that when lawyers of comparable ability compete over the issues of fact they will develop the evidence in the trial for the jury to see.

Lawyers represent clients. Mr. Kimelman for the Government, Mr. Lombardo for the defendant. They are protagonists. They take their client's position and they work effectively when they work with the zeal that they have displayed in this case.

The Court and Jury are in a different position.

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3

Charge

The Court and jury is dispassionate, objective, and just as the Court is the sole judge of the law, so the jury is the sole judge of the facts.

It is important that you understand the particular function that the jury plays, vis a vis the function of the Court.

We are both judges. The Court is the sole judge of the law. That means in effect all during the trial I passed on questions of law. They include rulings on objections to questions, usually on the admissibility of evidence, and, of course, at the end of the trial, I have the obligation of charging you on the applicable law. I charge you on the law as I understand it.

The law starts with Title 26, specifically Section 7201 and Section 7206, which is part of the Internal Revenue Code enacted by the Congress. The theory is that the interpretation that I give to the law is substantially the same as that given every way in the United States and the territories of the United States.

The sound reason for that is that the law should be predictable and uniform and uniformity makes for predictability.

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Just as I am charging you the law as I understand it, so you must accept it as the law governing this case. You may not agree with the law as I charge it. You may think it unsound. You may think that you could do a better job in fashioning an income tax law, but you would be violating your obligation as jurors if you failed to accept the law and follow it as I charge it.

It is not for either one of us to infuse, to inject our interpretation of what the law should be. It is for me to charge you on what I understand the law is and for you to accept the law as I charge it.

Similarly, you are the sole judges of the facts which means that you and you alone will make fact determinations on the contested issues, the material issues at hand; that is, one whether the defendant received property or money; whether they were gifts, and, of course you will decide that fact question in accordance with the law as I charge it.

Thirdly, the state of mind of the defendant when he made and filed his income tax return. When I refer to the defendant, I may refer to the charge or the charges, but as I will explain later, each

charge is identical, except for the year and except for the statement of the amounts of taxes due and I will tell you then as I have already told you, that it is not the precise amount of tax due that meets the requirements of the statute, but rather a substantial amount of tax due and the attempt to evade or defeat a substantial amount of tax due.

Understanding the role that each participant in a trial plays, I would say that we have taken a long step toward affording a fair trial. A fair trial means a fair trial to both sides, both the Government and the defendant.

We start as Mr. Lombardo correctly said we should start with the presumption of innocence. The defendant is presumed to be innocent of each and every charge in the indictment. That means that at the outset of the trial you must conclude that the defendant is innocent of each and every charge and that presumption clothes the defendant, safeguards him, through the trial and throughout your deliberations, and is enough to acquit the defendant.

The defendant is sustained by the presumption of innocence and you may find the defendant guilty

of the crimes charged, only if and when the proof is of such quality that you find that it is proof beyond a reasonable doubt of the defendant's guilt.

I would like to analogize the principle to what we call a Scotch verdict. You have heard the term "Scotch verdict." In Scotland, there are three verdicts, guilty, not guilty and not proved. In this country, there are only two verdicts, guilty and not guilty, but the verdict of not guilty includes a verdict of not proved.

What is a reasonable doubt? A reasonable doubt is the kind of doubt a reasonable juror would have after examining all the evidence in the case. It is a doubt based on the record in the case. It is not a vague, speculative or imaginary doubt. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act in a matter of importance to himself or herself.

Beyond a reasonable doubt is, therefore, proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important and weighty of your own affairs.

The Government's burden is not to prove the guilt of the defendant beyond all doubt. The Government's

burden is to prove the guilt of the defendant beyond a reasonable doubt.

The burden of the Government is not to prove that every bit of evidence introduced in the trial is not true beyond a reasonable doubt. The Government's burden is to prove each and every essential element of the crime charged beyond a reasonable doubt. I will list for you later in the charge the essential elements of the crime charged.

A reasonable doubt may arise from the failure of the Government to produce evidence. The defendant does not have to prove his innocence. On the contrary, the defendant is presumed to be innocent of the charges in the indictment. The defendant may rely on the failure of the Government to prove his guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not depend on the volume of the documents or the number of witnesses called by the Government. It depends on the quality of the evidence produced.

The evidence in the case includes the sworn testimony of the witnesses, both direct and cross-examination, and redirect and recross; all the exhibits that are received in evidence; facts which may have been

admitted or stipulated.

I think it is helpful to charge the jury on what is not evidence. Statements or arguments of counsel in opening and in the summation are not evidence. They both serve a useful purpose. The opening is designed to alert the jury as to the evidence that is to come so the jury may more easily follow the evidence, and the summation is designed to focus attention on what the lawyers regard as the important points and the importance evidence.

Each lawyer has argued to you from their special positions and offered theories of inculpability on behalf of the Government by Mr. Kimelman; that in effect means arguments that the Government proved the defendant's guilt beyond a reasonable doubt; and theories of exculpability, argued by Mr. Lombardo, which in effect argued that the Government failed to prove guilt beyond a reasonable doubt.

The charts and summaries were introduced into evidence at the end of the trial. The numbers were something like 124 or 125 or 126. The charts and summaries are not primary evidence. You look to the other evidence in the trial to see if the figures are supported by the evidence in the case. If they are not

just disregard the figures. They are introduced into evidence solely as a guide for the jury and as an aid to the jury in seeking out the truth.

Any statements made by the Court are not evidence in the case. Evidence stricken from the record is not evidence in the case. As I directed the court reporter to physically strike from his tapes so I direct you or as I told him to actually strike it from the record, I asked you to figuratively strike it from your recollection and memory and certainly from your consideration on the theory that it is not in the record. It has been eliminated from the record and you may not consider it.

At times the Court sustained objections to questions. You may not speculate on what the answer might have been if it witness were permitted to answer on the theory the witness did not answer; therefore, his or her answer was not in the record.

What is evidence? Evidence is the method by which the law proves or disproves a disputed fact. Evidence is generally classified as either direct evidence or indirect, sometimes called circumstantial evidence.

Direct evidence is the testimony of a witness

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as to what that witness saw or heard.

Circumstantial evidence, on the other hand is proof of a disputed fact by the jury drawing an inference from the establishment of circumstances from which the inference may reasonably be drawn based on good common sense and experience.

The example I usually give I will give again here. Let us assume a hypothetical situation. Let us assume the jury was sitting here in a civil case and the principle we will regard is similar.

Let us assume Mrs. A. was suing Mr. B; claiming that Mr. B passed a stop sign without stopping and struck her on a particular day, at a particular corner, or intersection. If my courtroom Deputy and myself were standing on the particular corner at the particular time , and we would assume for the moment I had my back to the intersection and I had my back to the stop sign and let us assume he was standing facing me and facing the stop sign and facing the roadway. If he were called to testify he might say that as he was speaking with me, he saw the defendant's motor vehicle; let us assume it was a 1977 white Cadillac. He might testify that he saw the Cadillac as it came into the area of his peripheral vision and then saw it

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as it went by, traveling about 70 miles an hour past the stop sign and struck Mrs. A. That's direct evidence on that issue. You must first identify the issue that is controverted.

The Plaintiff says he failed to stop. The Defendant denies it and said he did stop. That is direct evidence on that issue.

If I were called to testify as to circumstances from which you might reasonably draw the inference that the motor vehicle passed the stop sign without stopping. I could not give direct testimony on that particular issue because I didn't see it, but I might say I had, speaking with my courtroom deputy, that I turned to my right and I noticed the motor vehicle traveling at about 70 miles an hour. It passed behind me and about two or three seconds later, after the motor vehicle had traveled about 150 feet, I turned to my left. I saw the motor vehicle traveling at about the same rate of speed and strike the plaintiff. I think you would agree with me from those circumstances, the speed of the car, the length of time it took to traverse 150 feet, that it maintained the same speed at the time I saw it, I think you would draw the reasonable inference that that motor vehicle passed the stop sign without stopping.

Charge of the Court

T 4 am
R #3
ss/bw

THE COURT (Cont'd): The law does not hold that one form of evidence is of better quality than the other. At times circumstantial evidence is of better quality. . At times direct evidence is of better quality. At times the only way you can prove an issue of fact, like state of mind, here, did the defendant know when he signed the income tax return each year, 1972 for the 1971 return; '73 for the '72 return and so on, was he aware that he was understating his gross income? Was he aware that what was stated in the income tax return, the gross income was erroneous and false? That is state of mind. The Government must prove beyond a reasonable doubt what the defendant, Mr. Tsanas, was thinking at the time. It can only be proved by circumstantial evidence.

You, the jurors, are the sole judges of the credibility of the witnesses which means the believability of their testimony and the weight their testimony deserves. Scrutinize the testimony given and the circumstance under which each witness testified in every matter in evidence which tends to show whether the witness is worthy of belief.

Consider each witness's intelligence. Consider each witness's motive, the reason the witness is

testifying and the witness's state of mind while testifying.

Consider the demeanor and manner while on the witness stand. Is the witness answering fully and directly or is he evading answering the question?

Consider the witness's own ability to observe the matters as to which he is called upon to testify.

Consider whether he or she shall have impressed you as having an accurate recollection of those matters.

Consider the relaticnship each witness might bear to t he outcome of the case and the manner in which the witness might be affected by the verdict.

Consider the extent, to which if at all, the witness is either supported or contradicted by other evidence in the case.

In determining the credibility of witnesses, you may not take into consideration the wealth of a witness, the wealth of a witness has no bearing in and of itself on the ability of the witness to tell the truth.

If a witness is shown to have knowingly testified falsely concerning a material matter, you have the right to distrust all that witness's testimony or you may decide to accept such parts of it as you may think is credible. That principle underscores the wide discretion

the jury has in assessing the credibility.

We turn to the indictment in this case. The indictment is merely the method of bringing a defendant into court to answer charges. The allegations of the counts of the indictment are not to be considered by you as proof. Proof comes from the evidence in the case, the testimony of the witnesses and the exhibits marked in evidence.

You are not to attach any significance to the fact the indictment is brought in the name of the United States. The prosecution and the defendant are equals in this court. The obligations of the prosectuion and the rights of the defendant are not to be reduced because the prosecution is in the name of the United States of America.

As I indicated to you, the charge in the indictment is based on Title 26, Section 7201. Most of the Federal Law is codified. Title 26 is the Internal Revenue Code. It is the Congress that defines a crime.

7201 recites as follows: "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this Title or the payment thereof" is guilty of a crime. I intend to read all five counts in the indictment, but I will extend my remarks in reference

to Count 1 and then tell you what the differences are in the other counts.

Again, when you refer to the Memorandum of Verdict, you would rather be thinking of what I am charging you now and telling you what the counts say in haec verba, in actual language, hoping that when you refer to the precis or synopsis I gave you, that you recall everything that was charged here.

Count 1 charges as follows: "On or about the 14th day of April, 1972, in the Eastern District of New York, Andrew Tsanas, resident of Brooklyn, New York, who during the calendar --" strike out "who during the calendar" -- did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed and by mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent income tax return on his behalf which was filed with the Internal Revenue Service wherein it was stated that his taxable income for said calendar year was the sum of $15,986.00 and that the amount of tax due and owing thereon was the sum of $3,257.00, whereas he then and there well knew his taxable income for the

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said calendar year was the sum of approximately $72,386.00, upon which said taxable income there was due and owing to the United States of America an income tax of approximately $29,032.00.

In violation of Title 26, United States Code, Section 7201."

I want to point out what the Government is charging here, that the method and manner in which the defendant attempted to evade or defeat the income tax due for 1971 was by making, signing and mailing a false and fraudulent income tax return. That is how the indictment spells out the type or manner used to evade or defeat the tax imposed. I used the word of the statute, the "manner."

As I said, Count No. 2 reads exactly the same except for the tax year and the difference in the amount. I'll read it to you.

"On or about the 7th day of March, 1973, in the Eastern District of New York, Andrew Tsanas, resident of Brooklyn, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year, 1972 by preparing and causing to be prepared, by signing and causing to be signed, and by

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mailing and causing to be mailed in the Eastern District of New York, a false and fraudulent income tax return on his behalf which was filed with the Internal Revenue Service, wherein it was stated that his taxable income for said calendar year was the sum of $17,092.00 and that the amount of tax due and owing thereon was the sum of $3,566.00, whereas he then and there well knew his taxable income for the said calendar year was the sum of approximately $178,607.00, upon which said taxable income there was owing to the United States of America an income tax of approximately $96,233.00; a violation of Title 26, United States Code, Section 7201."

Count Three refers to the tax year 1973. You will note that on the Memorandum of Verdict, I did not show that you may find the defendant guilty or at least consider guilt of the defendant of a lesser included offense. I just showed it in Count One, but all that is intended to be repeated. I will come to that in detail when I charge you on the lesser included offense.

We will come to Count Three which, as I say, is for the tax year 1973.

"On or about the 12th day of April, 1974, within the Eastern District of New York, Andrew Tsanas, resident of Brooklyn, did wilfully and knowingly attempt to

evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1973, by preparing and causing to be prepared, by signing and causing to be signed, by mailing and causing to be mailed, in the Eastern District of New York, a false and fraudulent income tax return on his behalf which was filed with the Internal Revenue Service, wherein it was stated that his taxable income for said calendar year was the sum of $16,431.00 and that the amount of tax due and owing thereon was the sum of $3,381.00, whereas he then and there well knew his taxable income for the said calendar year was the sum of approximately $256,648.00, upon which the said taxable income there was owing to the United States of America an income tax of approximately $150,634.00. In violation of Title 26, United States Code, Section 7201."

Count Four, which is for the taxable year 1974.

"On or about the 9th day of April, 1974, in the Eastern District of New York, Andrew Tsanas, resident of Brooklyn, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1974, by preparing and causing to be prepared, by signing and causing to be signed, by mailing and causing

to be mailed, in the Eastern District of New York, a false and fraudulent income tax return on his behalf which is filed with the Internal Revenue Service, wherein it was stated that his taxable income for said calendar year was the sum of $18,563.00 and that the amount of tax due and owing thereon was the sum of $3,978.00, whereas he then and there well knew that his taxable income for the said calendar year was the sum of approximately $377,951.00. upon which said taxable income there was owing to the United States of America an income tax of approximately $235,546.00.

In violation of Title 26, United States Code, Section 7201."

The Fifth Count: "On or about the 24th day of March, 1976, in the Eastern District of New York, Andrew Tsanas, resident of New York, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year, 1975, by filing and causing to be filed, with the Director of Internal Revenue Service, North Atlantic Region, at Holtsville, Long Island, New York, a false and fraudulent income tax return on his behalf wherein it was stated that his taxable income for calendar year was the sum of

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$19,971.00, the amount of tax due and owing thereon was the sum of $4,252.00 whereas he then and there wel knew that the taxable income for the said calendar yea was the sum of $600,867.00 upon which said taxable income there was owing to the United States of America an income tax of approximately $391,587.00.

In violation of Title 26, United States Code, Section 7201.

To attempt to evade or defeat a tax involves tw things. First, an intent to evade or defeat the tax, and second, some act, willfully done, in furtherance of such an intent. The word "attempt" contemplates the accused had knowledge or understanding, and I am referring to count 1 now; that during the calendar year 1971 he had an income which was taxable and which he was required by law to report but that he nevertheless attempted to evade or defeat the tax thereon or a substantial portion thereof by willfully failing to report all the income which he knew he had during such calendar year and which he knew it was his duty under the law to state in his return for such year.

The indictment alleges that the manner in which the defendant attempted to evade or defeat the tax due was by filing an income tax return which failed to report

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all the gross income. The statute makes it a crime, wilfully to attempt, in any way or manner, to evade or defeat any income tax imposed by law.

The attempt to evade the tax or defeat the tax must have been a wilfull attempt; that is to say, must have been an attempt made voluntarily and intentionally and with specific intent to keep from the government a tax imposed by the income tax laws which was a legal duty of the accused to pay to the government and which the accused knew that it was his legal duty to pay.

In other words, the Government must prove that the attempt to evade or defeat income taxes was made with a deliberate intent to defraud the government of some substantial amount of the income tax lawfully due from the accused.

The Government must prove these three separate essential elements beyond a reasonable doubt in order to prove the crime charged.

One, the fact that a substantial different amount of federal income tax was due and owing from the accused for the calendar year 1971 over and above the amount of tax which was declared or disclosed in defendant's income tax return for that calendar year. The Government does not have to prove how much the additional tax on the

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additional income would have been. The Government has to prove that a substantial additional amount of federal income tax was due and owing for the calendar year 1971.

Now what is substantial as a fact question for the jury, but you can take into consideration the amount of gross income that was reported and the amount of tax that was paid.

Two, knowledge of the accused that some additional federal income tax of a substantial amount was due and owing from him to the Government for the calendar year 1971 over and above the amount of tax which was declared or disclosed in his income tax return for that calendar year.

Three, that the accused wilfully attempted to evade or defeat such additional tax with specific intent to defraud the government of such additional tax by falsely stating his gross income.

(Continued on next page)

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THE COURT: (Continuing)

As stated above, the burden is always on the prosecution to prove beyond a reasonable doubt every essencial element of the crime charged. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or providing any evidence.

In computing defendant's income to determine whether a tax was due on it, the jury should include any and all funds, whether legally or illegally acquired. If the jury finds from the evidence that there was taxable income received by the defendant and not reported as the law requires, it makes no difference as far as the defendant tax liability is concerned that the income came from an illegal source.

If a person in good faith believes he has paid all the taxes he owes, he cannot be guilty of criminal intent to evade the tax, but if a person acts without reasonable ground for belief that his conduct is lawful, it is for the jury to decide whether he acted in good faith or whether he wilfully intended to evade the tax. This issue of intent as to whether the defendant wilfully attempted to evade or defeat the tax is one which the jury must determine from a

consideration of all the evidence in the case bearing on the defendant's state of mind.

6064 of the Internal Revenue code provides that the fact that the individual's name is signed to a return shall be prima facie evidence for all purposes that the return was actually signed by him, which is to say that unless and until outweighed by evidence in the case which leads the jury to a different or contrary conclusion, the jury may find that a filed tax return was in fact signed by the person whose name appears to be signed to it. Whenever the fact appears beyond a reasonable doubt from the evidence in the case that the accused signed his tax return, the jury may draw the inferences and find that the accused had knowledge of the contents of the return.

If you find beyond a reasonable doubt from the evidence in the case that a fraudulent return was filed with the specific intent on the part of the accused to evade or defeat a substantial part of the tax lawfully due from him, that this was done wilfully, the offense was complete as soon as the fraudulent return was wilfully filed.

Although the proof need not show an evasion of

all the tax alleged in the indictment, the evidence in the case must establish beyond a reasonable doubt that the accused willfully attempted to evade or defeat some substantial portion of the tax as charged. Failure to comply with requirement of the Internal Revenue Code for one year is a separate offense from such failure to comply for a different year. The defendant tax obligation in any one year must be determined separately from his obligations in any other year.

For the purpose of this case, a payment is a gift if it is made without conditions from detached and disinterested generosity, out of affection, respect, charity or like impulses, or to use the phrase of one of the lawyers that summed up, "out of the goodness of one's heart without any conditions."

It is not a gift if the property is transferred or the money paid from a constraining force of any moral duty. In other words, if the donor, the party giving the money or property felt they had a moral duty to give it, it is not a gift. If the money or property was given because of anticipated benefits of an economic nature, it is not a gift. A gift does not contemplate return of the money or property transferred.

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A gift may be made by an individual, corporation or partnership. If Mr. Lazar and Mr. Segal or Mr. Eisenberg gave money or paid defendant's bills -- when I talk about defendant bills, bills where he received the benefit -- expecting that the defendant would assure future construction contracts from J. C. Penney, it is not a gift. If money or other things of value were given in the form of bribes or kickbacks to assure Lazar, Segal and/or Eisenberg that they would continue to get work or additional contracts for construction from Penney, then it is not a gift. It then is reportable income.

If you unanimously find the defendant not guilty of the offense charged in the indictment, then it becomes your duty to determine whether the defendant is guilty of the lesser included offense of making a false and fraudulent statement under 26 USC section 7206. In other words, the graver offense is the charge of income tax evasion under 7201. The lesser offense is the charge under section 7206, the offense of making a false and fraudulent statement.

In the other case, in the more severe, the graver case, 7201, the Government must prove that the false and fraudulent statement was made for the purpose

of defeating, or at least attempting to defeat or evade a substantial amount of income taxes due. That is not necessary in section 7206. You may consider the lesser offense if you find, if all the jurors find the defendant not guilty of the crime charged in the indictment. Even though it's not stated in the indictment, it is before you if you find the defendant not guilty of the charge in the indictment.

Of course, all the essential elements of the crime with reference to count 1 applies to each and every other count. In count two, it applies to 1972. In count 3, to 1973. In count 4 to 1974. In count 5, to 1975. I think it would be a waste of time and uninstructive if I just repeated all those essential elements for each crime charged. As I say, for our purposes and for this particular purpose, they are identical except as to the year.

It is true of the lesser crime. The lesser included offense that I am charging you on now, I am referring to count one, but it is true of each and every year, each and every count.

The law permits the jury to find the accused guilty of any lesser offense which is necessarily included in the crime charged in the indictment whenever

such a course is consistent with the facts found by the jury from the evidence in the case, and with the law given and the instructions of the Court. If the jury should unanimously find the accused not guilty of the crime charged in the indictment, then the jury must proceed to determine the guilt or innocence of the accused as to the lesser offense which is necessarily included in the crime charged.

The crime of willfully attempting to evade a tax, which is the crime charged in the indictment, necessarily includes the lesser offense of willfully making a false and fraudulent statement as defined in 26 USC Section 7206.

This is the section upon which the lesser crime is based. 26 USC Section 7206 says in pertinent part, "Any person who willfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter" commits the crime under that section. In other words, anyone who makes an income tax return out which recites -- you will see in the returns here it recites under penalty of perjury and knows that the statement made

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is not true and correct as to every material matter, commits the crime under this section.

It is the obligation of every taxpayer to make a true and accurate report as to his gross income. An income tax return signed by a taxpayer who knowingly and willfully understates a substantial part of his gross income is in violation of this section. In order to prove the lesser crime, the Government must prove the following essential elements under 7206(1). "One, that the accused made and signed an income tax return for the year in question, which contained a written declaration that it was made under penalty of perjury.

"Two, that the return contained a false statement concerning gross income.

"Three, that the accused did not believe the income tax return to be true and correct as to gross income, and,

"Four, the accused made and signed the return knowingly and willfully."

Knowingly means being aware what is in the tax return; that it wasn't through error, mistake, negligence, even gross negligence, but that he knew he was committing a crime by mis-stating the gross income and

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wilfully means doing it deliberately, intentionally and not through error.

The tax payer as previously stated has the obligation of making a true and correct report of his income, that means both truthful and accurate.

In order to sustain the burden of proof under the lesser included crime, the Government must prove beyond a reasonable doubt that the accused was aware that the gross income was substantially understated and deliberately, voluntarily and intentionally made and executed the income tax return realizing the understanding that it was a violation of law to do so.

You will shortly be excused to deliberate on the matter before you. Each juror must decide the case for himself and herself based on the evidence in the case. The jury has the obligation of exchanging views among the members of the jury. It would be improper for any juror to take an intransigent and obdurate position and refuse to discuss his opinion, his views with the other jurors. In other words, it would be a violation of your obligation as jurors to come into the jury room and in effect say "I've made up my mind. I am not going to talk about it." If you have arrived at a decision and through your

discussions you later realize that you were wrong, you should not hesitate to abandon your tentative decision and make a determination that is consistent with the evidence.

On the other hand, it is just as improper for any juror to abandon his duty and in effect say "Well, I'll go along with whatever you say." That is wrong too. Each juror must make up his mind fairly, based on the evidence, exchanging your views with your other fellow jurors and attempt to arrive at a unanimous verdict.

During your deliberations you may want some testimony read back. Send me a note through your foreman and try to identify the individual whose testimony you want, and if possible the subject matter. Tell me if you want all the testimony or just the direct or just the cross or just the redirect, if you can recall. If I get a note like that, I will take it up with the lawyers and then when we understand what you really want, I will call you back to the courtroom and I will read the testimony back to you.

When you have arrived at a verdict, send me a note. Do not tell me what the verdict is. Do not say guilty or not guilty as to count so and so. Just say

"We have arrived at a verdict." When I get a note of that kind, I will call you all back to the courtroom and in effect I will call on the foreman and say, "In United States of America against Andrew Tsanas, how do you find the defendant as to count one, guilty or not guilty? How do you find the defendant as to count two, three, four and five," and you will render your verdict. You will sit down and I will ask juror number 2 if she has heard the verdict and I will ask her if that is her verdict. Juror number 3 I will ask if it is his verdict and so forth.

If I get twelve independent verdicts that are the same in open court, then for the first time it becomes the verdict of the case, not before. It would be improper for you to reveal what the verdict is on the note.

Of course, I said you can ask that testimony be read back. You can ask for any and all the exhibits. If you want any particular exhibit, ask for the particular exhibit. If you want all the exhibits, I shall send them in.

All your communication must come through your foreman to the Marshals who will be assigned to the Court.

11

Charge of the Court

At this point, Ladies and Gentlemen, I will ask you to take leave -- incidentally, on these memoranda of verdict, the foreman will get two. I want you to sign one, but as far as the other one is concerned, you can mark it up and destroy it. As I say, it has not got any special significance. It is not an official document. You can use it as scrap paper if you wish.

The real purpose is to remind you what the charge is and to remind you that if you find the defendant not guilty as to the charge in the indictment then you may proceed to the lesser count to determine his guilt or innocence on the lesser included count.

At this point I would appreciate it if you left the courtroom. Do not start your deliberations. Leave the memorandum of verdict on your chairs. I will be calling you back very soon.

The jury is excused. Do not start deliberations yet.

(Jury leaves courtroom.)

THE COURT: Mr. Kimelman, any exceptions?

MR. KIMELMAN: No.

THE COURT: Mr. Lombardo?

MR. LOMBARDO: No exceptions.

3 1 THE COURT: It's too early for summation.

2 MR. LOMBARDO: Of course, your Honor; of course,
3 your Honor.

4 THE COURT: Let me suggest he bring his corporate
5 tax return.

6 MR. KIMELMAN: I will reluctantly inform the
7 Court under the Tax Return Act there are numerous
8 prerequisites that must be satisfied.--

9 THE COURT: I am not talking about the original.
10 He has copies.

11 MR. KIMELMAN: On any information, your Honor,
12 on that tax return, the tax return information which
13 is related information, there are very, very strict
14 disclosure laws. And I am not in a position to dis-
15 close them unless all of the procedures followed in
16 the Act are undertaken. Because I am subject to
17 criminal prosecution.

18 MR. LOMBARDO: Let him say before the jury --
19 and when I say he, I mean this corporate officer --
20 that he wishes to rely on a technical privilege and
21 not permit me to inspect his corporate tax returns.

22 You can't have it both ways.

23 MR. KIMELMAN: I think, your Honor, Mr. Lombardo
24 has yet not indicated to the Court the basis of the
25 relevancy under this testimony or his proposed

questions. And once he does that we can go further. But counsel has not made a reasonable request.

MR. LOMBARDO: How can I possibly look at a pig in a poke? How can I possibly say there is something there if I haven't looked at it yet?

All I know is this man claimed he gave my client about a million four hundred thousand dollars.

THE COURT: Who or what would be revealed on the tax return?

MR. LOMBARDO: I can't say, your Honor.

THE COURT: Are the books available?

MR. KIMELMAN: Mr. Lombardo says the Government has them, and that's true, your Honor. But Mr. Lombardo has never asked me to see Lazar's books, and he has never subpoenaed the books.

THE COURT: Why don't you let him look at the books?

MR. KIMELMAN: If he serves a subpoena, I will be happy to let him look at them.

MR. LOMBARDO: I thought you said this morning under your liberal discovery --

MR. KIMELMAN: We have the books under subpoena your Honor.

THE COURT: Do you have them in your possession?

MR. KIMELMAN: Yes. The company has possession

of the Lazar Company books.

THE COURT: You are directed to submit the books to Mr. Lombardo.

MR. LOMBARDO: Or my accountant, your Honor.

THE COURT: All right.

MR. KIMELMAN: They will be available here.

MR. LOMBARDO: In this courtroom?

THE COURT: In your office.

MR. KIMELMAN: The courtroom building.

MR. LOMBARDO: We have another problem, your Honor.

The man by the name of Mr. Axelson. Now, Mr. Axelson had expensive work done on his apartment. As a matter of fact his apartment was a larger apartment than the apartment of Mr. Tsanas, where allegedly there was $400,000 worth of work done. Mr. Axelson paid $800 for this work.

Now, I am certain that the Government has -- and again, I tried to get these records and I understand the Government had them --that the Government has the records showing what Lazar did on Mr. Axelson's apartment.

And even more interesting is why Mr. Axelson was never indicted for filing a false tax return, just as was Mr. Lyon because work was done on his house and

negative.)

THE COURT: Did anybody tell you about anything relating to this case in the newspapers?

ALTERNATE JUROR 4: I saw something the other day.

THE COURT: Will everyone please leave the jury room except alternate juror No. 3 -- I'm sorry, alternate juror No. 4.

(All members of the jury left the courtroom except alternate juror No. 4)

THE COURT: Mr. Lurie --

ALTERNATE JUROR NO. 4: Mr. Lurie.

THE COURT: I am sorry.

Where did you read it?

ALTERNATE JUROR 4: In the News.

THE COURT: Did it say anything about it?

ALTERNATE JUROR 4: Yes.

THE COURT: What did it say?

ALTERNATE JUROR 4: That the wife pleaded guilty in 1974.

THE COURT: Did you talk about this with any other jurors?

ALTERNATE JUROR 4: No, sir.

THE COURT: Do you feel that that information

matters, and, Mr. Lenza, I would appreciate it if only one lawyer were here speaking for the defendant, and I would rather that it be Mr. Lombardo.

I am not going to go into complicated procedures, the inquiry has gone deep enough.

MR. LOMBARDO: There is no problem about speaking to him after he is excused.

THE COURT: I don't care if you talk to him.

I think we will adjourn to Judge Bartels courtroom, I don't see anybody in there.

(At this point, the trial was continued in Judge Bartels courtroom.)

(Mr. Lurie was then called into Judge Bartels courtroom without the other jurors.)

THE COURT: Mr. Lurie, we take great care and we have great concern about the jurors being influenced by outside sources and factors, and although I am convinced and the lawyers are convinced that you would not consciously be influenced by what you read, still there is always a subconscious influence and we can never know that, even you could not know it.

We think you are highly motivated and have displayed an honesty that I commend you for in telling us that you had read it, but because of our great concern, and frankly because there would be little chance

on your deliberating as the fourth alternate, we have decided that you should be excused.

Now do you have anything in the jury room, do you have any clothing of any sort?

MR. LURIE: I have a coat, a raincoat.

THE COURT: All right.

Would you please take that without mentioning a word to the jurors.

I will explain to them after you leave what happened and for what reasons, that it is just personal that I excuse you.

Thank you very much, Mr. Lurie.

Incidentally, one of the lawyers may ask you questions about how you felt and what happened in the jury room and if it concerns any improper influence in the jury room or anything improper, and you may answer those questions, I have no objection to telling him what happened in your contact with the other jurors.

Is that all right?

MR. LURIE: Yes.

(Mr. Lurie then left the courtroom.)

THE COURT: We might as well mark the other 3500 material.

(continued next page)

THE COURT: We are all working under pressure and you will get a full opportunity to read them, but there is no need for us to take a recess so you can read it all.

Just read Julie Walker's now.

MR. LOMBARDO: All right.

THE COURT: All right.

THE CLERK OF THE COURT: Your Honor, Juror Number Ten would like to talk to you about the article.

THE COURT: About the article?

Ask Juror Number Ten to come out.

(Mr. Mehl, Juror Number Ten, then entered the courtroom.)

THE COURT: Did you want to say something?

MR. MEHL: Yes.

If it is with reference to the wife being indicted, there is an article --

THE COURT: What did it say?

MR. MEHL: It said that she pleaded guilty.

THE COURT: Where did you read it?

MR. MEHL: My wife showed it to me, I think it was in yesterday's paper or the day before's paper.

THE COURT: Well, do you think you can

continue to be fair in this case?

MR. MEHL: I think so.

THE COURT: Have you discussed the article with anybody else?

MR. MEHL: No, I didn't discuss it with anybody, just thought of it, if that is the article, if that is the one that you are talking about.

THE COURT: Well, I don't know, I never saw it.

MR. MEHL: Well, she showed it to me.

She asked me if I am on this case, she saw it, the wife was indicted.

THE COURT: All right.

I would appreciate your not talking about this with anyone on the jury.

MR. MEHL: No.

THE COURT: I will excuse you, but don't say anything, don't tell them why you came in and talked.

MR. MEHL: I am excused from the jury?

THE COURT: I don't know yet, I will talk to the lawyers, I don't know yet, I have to talk to the lawyers but don't say anything.

MR. MEHL: Oh, no.

(Juror Number Ten then left the courtroom.)

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Appeal

Certificate of Service

I certify that on September 20, 1977 I had mailed two copies of the Appendix to the Brief for Appellant, and on September 21, 1977 I mailed two copies of the Brief for Appellant (proof) to:

David Trager, Esq.
United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Donald S. Tsanas